

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3787 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2 Yes 3 to 5: No

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DUSHYANTKUMAR MANILAL VYAS

Versus

STATE OF GUJARAT

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Appearance:

MR HM PARIKH for Petitioner

MR RJ OZA for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 02/03/98

ORAL JUDGEMENT

1. The petitioner submits that he had applied for the advertised post of Technical Store Supervisor. He was interviewed for the said post. According to the petitioner, he is working on the said post. However, he is not being paid the salary of that post, but he is being paid the salary of the lower post of Store Keeper which carries the pay scale of Rs. 330-560 as against

the pay scale of Rs.550-900. The petitioner has, therefore, prayed for a direction to the respondent to pay him the salary of Technical Store Supervisor and fix the revised pay in the pay scale of Rs. 1640-2900.

2. It is true that the petitioner had applied for the advertised post of Technical Store Supervisor and he was interviewed by the Staff Selection Committee for the said post. However, the Staff Selection Committee had not recommended him for the post of Technical Store Supervisor (Rs. 550-900), but the Staff Selection Committee had recommended the petitioner for appointment in the pay scale of Rs. 330-560 against the post of Technical Store Supervisor and the petitioner was specifically asked whether he was willing to accept the appointment to this post in the pay scale of Rs. 330-560 (See Annexure B to the petition). The petitioner consented to the said terms and conditions and the appointment order came to be issued on 13.1.1986, a copy of which is produced today by the learned Counsel for the petitioner. This order specifically puts the petitioner D.M.Vyas in the pay scale of Rs. 330-10-380EB12440-EB-12-560 in the post of Store Keeper on probation for a period of one year. Thus, four things are absolutely clear : (1) the Staff Selection Committee had not selected him for appointment as Technical Store Supervisor; and (2) The Committee had recommended him for the lower pay scale of Rs. 330-560. (3) The petitioner has consented to such appointment and (4) the actual order of appointment is for the post of Store Keeper (Rs. 330-560).

3. The learned Counsel for the petitioner submitted that there was no post of Store Keeper in the Engineering Department and that he has been working as a Technical Store Supervisor and not as a Store Keeper as there is no post of Store Keeper in the Engineering Department. It is further submitted that in the Statement at Annexure C, against the post of Technical Store Supervisor, it is mentioned that there is one sanctioned post and that sanctioned post is filled in and the name of person occupying that post is the petitioner- D.M.Vyas. It is, therefore, submitted that the petitioner is appointed and working as Technical Store Supervisor and he should be paid accordingly. It is clear that he is not selected and appointed to the post of Technical Store Supervisor, but he is appointed against that post and appointed as Store Keeper in the pay scale of Rs. 330-560. It is, therefore, not possible to accept the submission that the petitioner is entitled to the higher post and higher pay scale of Technical Store Supervisor.

4. If the petitioner's argument is accepted, even though Staff Selection Committee has not selected him for the post of Technical Store Supervisor, he would get appointment to that post through the Court. The argument that there is no post of Store Keeper in the Engineering Department is of no assistance to the cause of the petitioner. There is a post of Technical Store Supervisor and against that post, the petitioner is appointed as Store Keeper. If there is no post of Store Keeper in the Engineering Department and the petitioner is appointed as Store Keeper in the Engineering Department, the appointment might be illegal, but that will not entitle the petitioner to get any appointment to the higher post for which the Staff Selection Committee has not selected him and not recommended for appointment to that post. The Staff Selection Committee has recommended him for the post of Store Keeper. In these circumstances, it would be illegal to direct the petitioner to be paid higher pay scale and higher post of Technical Store Supervisor.

There is no merit in the petition. Hence, it is dismissed. Rule discharged.

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mhs/-